

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

MICHAEL ROSS MILLER, R.Ph.,
RESPONDENT.

97 PHM 024

LS9807141PHM

The parties to this action for the purposes of §227.53, Wis. Stats., are:

Michael Ross Miller, R.Ph.
1320 S. Riverside Drive
Appleton, WI 54914

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Michael Ross Miller (dob 12/15/71) is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #40 12457, originally granted on 3/22/96.

2. Respondent did, on March 12 and March 28, 1997, give Mellaril®, a prescription drug, to C.B., a woman with whom he was having a romantic relationship. There was no prescription order from an authorized practitioner for this dispensing to C.B.

3. While Respondent was managing pharmacist for K-Mart Pharmacy #6026, respondent reported controlled substances missing on August 13, 1996, and October 14, 1996, but did not fill out company investigation report forms, contact the local Drug Enforcement

Administration Office to report a theft or loss of a controlled substance, notify police and pharmacy board, or mail reports.

4. Respondent did, on numerous occasions between January 1, 1996 and June 1997 use pharmacy patient profiles to obtain female customers' telephone numbers and addresses in order to ask them for dates, and use insurance information to ascertain female customers' marital status. Respondent had access to these sources of confidential information because of his position as pharmacist.

5. Respondent did, on numerous occasions between January 1, 1996 and June 1997, while on duty make unwelcome remarks of a sexual nature to customers and associates, ask customers, associates, and nurses for dates on the telephone, make unwelcome advances to female customers and ask personal questions unrelated to the dispensing of the prescriptions of female customers during patient counseling time, make unwelcome advances to female associates, approach associates to get personal information about female associates and to set up dates for him, invite an associate to a nude show, receive lewd faxes on the pharmacy fax machine, narrate sexual experiences to associates, use offensive language, lock associates out of the professional area when making personal calls, "bang" loudly on the pharmacy door window to get a female associate's attention, and make derogatory remarks to and about women. His conduct created an intimidating, hostile, and offensive work environment that was so pervasive and severe that associates did not like to work in his vicinity.

6. On or about Friday, March 28, 1997, respondent did follow customer J. W. outside of the store, leaving the pharmacy unattended by a pharmacist, to ask her if it has upset her that he had called her at home to see if she was available to date. Respondent made two medication errors within minutes following this and admitted to a pharmacy technician that he "probably was thinking too much about J." On numerous occasions between January 1, 1996 and June 1997, respondent did leave doctors or nurses waiting on the telephone for as long as five minutes because respondent was making personal calls on another line, thereby neglecting his duties as a pharmacist. On numerous occasions between January 1, 1996 and June 1997, respondent did use patient counseling time to ask female customers personal questions unrelated to their prescriptions and make unwelcome advances.

CONCLUSIONS OF LAW

A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraph 2, above, violated Phar 10.03(1), Wis. Adm. Code., and section 450.10(1)(a)2., Wis. Stats., and section 450.11(1), Wis. Stats. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in paragraph 3, above, violated Phar 8.02(3)(f), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. The conduct described in paragraph 4, above, violated Phar 10.03, Wis. Adm. Code, and section 450.10(1)(a)2., and section 146.82(1) and (2), Wis. Stats. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes and is a violation of confidentiality of patient health care records.

E. The conduct described in paragraph 5, above, violated Phar 10.02, Wis. Adm. Code, section 450.10(1)(a)(2), Wis. Stats., and is sexual harassment pursuant to section 111.36(1)(b) and 111.36(1)(br), Wis. Stats. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

F. The conduct described in paragraph 6, above, violated Phar 6.04(1), Wis. Adm. Code, Phar 10.03, Wis. Adm. Code, and section 450.10(1)(a), Wis. Stats. Such conduct constitutes leaving the pharmacy area unsecured and unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Michael Ross Miller, R.Ph. is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent's license to practice pharmacy is LIMITED in that, no later than 12/31/98, respondent shall take and satisfactorily pass a course of six hours or more in patient-health care provider boundaries, acceptable to and preapproved by the Board or its designee. Respondent's performance in the course shall be reported by the course sponsors directly to the Board through the Department Monitor, and respondent shall permit the Board or its designee(s) to speak directly to the course sponsors and faculty regarding any aspect of respondent's performance at the course. Until respondent has taken and passed this course, he shall provide a copy of this order to his employer(s) before providing any professional services to that employer, effective the date of this order.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$500 for the conduct described in paragraph 2, \$500 for the conduct described in paragraph 3, and \$1,000 for the conduct described in paragraphs 3-6, for a total of \$2,000, to be paid within 60 days of this order.

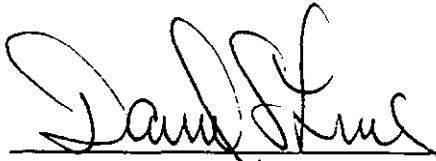
IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$200, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has

violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 14th day of JULY, 1998.

WISCONSIN PHARMACY EXAMINING BOARD, by:

A handwritten signature in cursive script, appearing to read "David Miller", is written over a horizontal line.

a member of the board

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g \alpha\legal\miller.stp

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL ROSS MILLER, R.Ph.
RESPONDENT.

STIPULATION
97 PHM 024

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent, the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

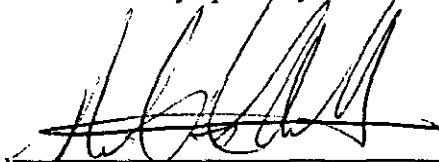
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

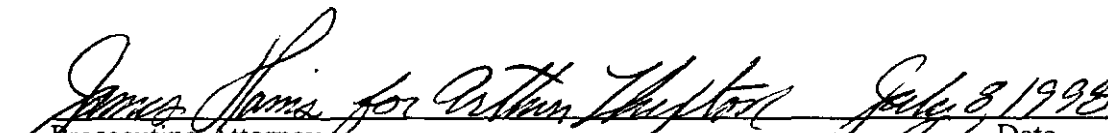
8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent stipulates that there is an adequate factual basis for the discipline imposed herein, although the Findings of Fact may not appear to justify the entire outcome. The language of the Findings has been negotiated as a matter of compromise between the parties, and respondent agrees not to claim in any forum that the discipline imposed was not justified by the Findings of Fact stated.

10. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the monthly Report of Decisions issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. Other reporting as required by law will occur. A press release will be prepared and distributed to all press boxes in the State Capitol building, to the press in the community where respondent resides and practices, and to individuals and organizations included on a mailing list maintained by the department. This is standard department procedure and in no way specially directed at Respondent.


Respondent

6/20/98
Date


Prosecuting Attorney
Division of Enforcement
July 8, 1998
Date

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529 impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On July 14, 1998, the Pharmacy Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$200.00 Case #: LS9807141PHM

The amount of the forfeiture is: \$2,000.00 Case # LS9807141PHM

Please submit a check or a money order in the amount of \$200.00 and \$2,000.00

The costs and/or forfeitures are due: Costs due: August 13, 1998; Forfeiture due: September 12, 1998

NAME: Michael Ross Miller LICENSE NUMBER: 12457

STREET ADDRESS: 1320 South Riverside Drive

CITY: Appleton STATE: WI ZIP CODE: 54914

Check whether the payment is for costs or for a forfeiture or both:

X COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

For Receipting Use Only

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Michael Ross Miller, R.Ph.,

AFFIDAVIT OF MAILING

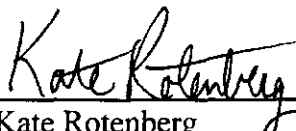
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On July 16, 1998, I served the Final Decision and Order dated July 14, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9807141PHM, upon the Respondent Michael Ross Miller, R.Ph. by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 603.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

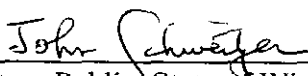
Michael Ross Miller, R.Ph.
1320 S. Riverside Drive
Appleton WI 54914



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 16th day of July, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MICHAEL ROSS MILLER RPH

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 7/16/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935